

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY NAIROBI PRIORITY

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E.O. 11652:N/A

TAGS: EFIN

SUBJECT: OAN AGREEMENT -- MPALA FARM LIMITED

1. PLEASE FORWARD TO EDWIN BRISTOW, KAPLAN AND STRATTON, QUEENSWAY HOUSE, KAUNDA STREET, NAIROBI, THE FOLLOWING REQUEST FOR AN OPINION OF COUNSEL IN CONNECTION WITH AN OPIC LOAN TO GEORGE L. SMALL THE OWNER OF MPALA FARM LIMITED. PLEASE FORWARD YOUR OPINION COVERING FAVORABLY THE MATTERS WITH RESPECT TO THE RANCH (MPALA FARM LIMITED) AND/OR THE BORROWER (GEORGE L. SMALL), AS THE CASE MAY BE, SUBSTANTIALLY IN THE FOLLOWING FORM:

2.1 EXISTENCE AND POWER OF THE RANCH. THE RANCH IS A CORPORATION DULY ORGANIZED, VALIDLY EXISTING AND IN GOOD STANDING UNDER THE LAWS OF THE REPUBLIC OF KENYA, IS DULY QUALIFIED OR AUTHORIZED TO DO BUSINESS IN ALL JURISDICTIONS IN WHICH THE NATURE OF ITS BUSINESS MAKES SUCH QUALIFICATION OR AUTHORIZATION NECESSARY, AND HAS THE POWER TO OWN AND OPERATE ITS PROPERTIES AND TO CARRY ON ITS BUSINESS.

2.6 TAXES AND REPORTS. ALL TAX RETURNS AND REPORTS OF THE RANCH REQUIRED BY LAW TO BE FILED IN ANY JURISDICTION
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OR ANY GOVERNMENTAL SUBDIVISION THEREOF HAVE BEEN DULY FILED, AND ALL TAXES, ASSESSMENTS, FEES AND OTHER GOVERNMENTAL CHARGES UPON THE RANCH OR UPON ANY OF ITS PROPERTIES, ASSETS, INCOME OR FRANCHISES, WHICH ARE DUE

AND PAYABLE HAVE BEEN PAID, OTHER THAN THOSE PRESENTLY PAYABLE WITHOUT PENALTY OR INTEREST AND OTHER THAN IN CONNECTION WITH TAXES, IF ANY, BEING CONTESTED IN GOOD FAITH, PROVISION FOR THE POSSIBLE PAYMENT IN FULL OF WHICH IS REFLECTED IN THE FINANCIAL STATEMENTS.

2.7 LITIGATION. THERE ARE NO ACTIONS, SUITS, PROCEEDINGS, OR INVESTIGATIONS PENDING OR, (TO THE KNOWLEDGE OF THE BORROWER, AFTER DUE INQUIRY) THREATENED, BY OR BEFORE ANY DOMESTIC OR FOREIGN COURT, REGULATORY COMMISSION, BOARD OR OTHER ADMINISTRATIVE GOVERNMENTAL AGENCY AGAINST OR AFFECTING THE BORROWER OR THE RANCH, OR ANY PROPERTY OR RIGHT OF THE BORROWER OR THE RANCH, WHICH, IF ADVERSELY DETERMINED, MAY IN THE AGGREGATE HAVE MATERIAL ADVERSE EFFECT ON THE PRESENT OR FUTURE FINANCIAL CONDITIONS ON BUSINESS OR PROSPECTS OF THE BORROWER OR THE RANCH.

2.8 PROPERTY. THE BORROWER HAS GOOD AND MARKETABLE TITLE TO THE RANCH AND THE RANCH HAS GOOD AND MARKETABLE TITLE TO EACH OF ITS ASSETS; INCLUDING THE ASSETS REFLECTED IN THE FINANCIAL STATEMENTS (OTHER THAN THOSE DISPOSED OF SINCE SUCH DATE IN THE ORDINARY COURSE OF BUSINESS), AND GOOD AND VALID LEASEHOLD INTERESTS IN EACH ASSET HELD BY IT UNDER LEASE, NONE OF WHICH IS SUBJECT TO ANY ENCUMBRANCE FORBIDDEN BY THIS AGREEMENT. NO SUCH ASSETS ARE HELD BY THE RANCH UNDER LEASE, EXCEPT TO THE EXTENT SPECIFICALLY DISCLOSED IN THE FINANCIAL STATEMENTS. THE RANCH HAS PEACEFUL AND UNDISTURBED POSSESSION OF ALL PROPERTY OCCUPIED OR OPERATED BY IT UNDER LEASE, EACH OF WHICH IS IN FULL FORCE AND EFFECT WITHOUT DEFAULT. EACH SUCH ASSET IS IN GOOD WORKING CONDITION.

2.10. COMPLIANCE WITH LAW. THE FINANCING AND OPERATION OF THE PROJECT, AND OTHER CONDUCT OF THE RANCH'S PRESENT AND PROPOSED BUSINESS IN THE REPUBLIC OF KENYA ARE NOW AND AT ALL TIMES WILL BE CARRIED ON UNDER ALL NECESSARY, VALID AND EXISTING REGISTRATIONS, AUTHORIZATIONS, EXEMPTIONS AND UNCLASSIFIED

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ORDERS AND IN ACCORDANCE WITH THE LAWS AND REGULATIONS OF THE REPUBLIC OF KENYA. NO REGISTRATION WITH, AUTHORIZATION EXEMPTION OR ORDER OF THE REPUBLIC OF KENYA, ANY OTHER JURISDICTION OR ANY GOVERNMENTAL SUBDIVISION THEREOF, NOT OBTAINED BY THE RANCH, IS REQUIRED TO PERMIT THE RANCH TO

CARRY OUT THE PROJECT OR TO OWN, OPERATE OR MAINTAIN THE RANCH'S ASSETS OR BUSINESS.

2.11 STOCK OWNERSHIP. THE BORROWER OWNS 9,999 SHARES OF CAPITAL STOCK OF THE RANCH FREE AND CLEAR OF ALL CLAIMS, LIENS AND ENCUMBRANCES WHATSOEVER, WHICH SHARES CONSTITUTE MORE THAN 99 PERCENT OF THE ISSUED AND OUTSTANDING

CAPITAL STOCK OF THE RANCH. THE RANCH DOES NOT HAVE OUTSTANDING ANY OBLIGATIONS, WARRANTS, RIGHTS, CONVERTIBLE SECURITIES OR OTHER OPTIONS WHICH, UPON THEIR EXERCISE AND/OR CONVERSION, AS THE CASE MAY BE, GRANT TO ANY PERSON THE RIGHT TO PURCHASE ANY CAPITAL STOCK OF THE RANCH.

2. PLEASE POUCH OPINION TO OPIC THROUGH EMBASSY.

3. WHERE YOU FEEL YOU ARE UNABLE TO GIVE THIS OPINION OR PORTIONS OF IT OR DO NOT HAVE SUFFICIENT INFORMATION SUCH AS WITH RESPECT TO FINANCIALS PLEASE GENERALIZE WHERE APPROPRIATE OR ELIMINATE THE SECTION FROM THE OPINION. THE EXACT LANGUAGE DOES NOT HAVE TO BE FOLLOWED. INGERSOLL

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